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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA

4 v.

13 CR 428 (PAE)
Sentence

5 RAYMOND KORNEGAY

6 Defendant

-----x

7 New York, N.Y.
8 February 6, 2015
11:15 a.m.

9 Before:

10 HON. PAUL E. ENGELMAYER

11 District Judge

12 APPEARANCES

13 PREET BHARARA

14 United States Attorney for the
Southern District of New York

15 BROOKE CUCINELLA

Assistant United States Attorney

16 SARAH KUNSTLER

17 Attorney for Defendant Kornegay

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(In open court; case called)

THE DEPUTY CLERK: Government ready?

MS. CUCINELLA: Brooke Cucinella on behalf of the government standing in for Andrea Griswold. Good morning.

THE COURT: Good morning, Ms. Cucinella.

MS. KUNSTLER: Good morning, your Honor. Sarah Kunstler for Mr. Kornegay.

THE COURT: Good morning, Ms. Kunstler.

Good morning, Mr. Kornegay.

THE DEFENDANT: Good morning, your Honor.

THE COURT: I am going to begin by reviewing the materials I've received in connection with sentencing. Then before proceeding any further, I want to take up the issues presented in Mr. Kornegay's letter of January 14 which I circulated to counsel.

We are here today to impose sentence in the case of United States v. Raymond Kornegay. On January 15 of last year, Mr. Kornegay was convicted after a three-day trial of one count of conspiracy to commit Hobbs Act robbery and of three substantive counts of Hobbs Act robbery, each of which were keyed to a particular robbery of a cell phone store.

In preparation for today's proceeding, I reviewed my notes of the trial to refresh my memory. I also reviewed the presentence report dated October 31, 2014 including the recommendation and addendum to that report.

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1 I've also received the following additional
2 submissions: The defendant's very thoughtful and helpful
3 submission dated December 19, 2014, which in turn is
4 accompanied by an appendix of exhibits. Second, a letter from
5 Mr. Kornegay raising questions about his representation which I
6 circulated to counsel as an attachment to an order I issued on
7 January 21, 2015. And the government's submission which was
8 also very thoughtful and helpful dated January 20, 2015.

9 Have the parties received each of these submissions?

10 MS. CUCINELLA: Yes, your Honor.

11 MS. KUNSTLER: Yes, your Honor.

12 THE COURT: Have any additional submissions been made
13 in connection with sentencing?

14 MS. CUCINELLA: No, your Honor.

15 MS. KUNSTLER: No, your Honor.

16 THE COURT: Before proceeding any further, I just want
17 to take up the letter from Mr. Kornegay again dated January 14.
18 I took Mr. Kornegay to again be raising the question of his
19 wanting to receive the document that he believes contains some
20 waiver by him going back to 2013, which a series of counsel
21 have now represented they've tried to find or identify and have
22 been unable to do so.

23 Ms. Kunstler, have you had an opportunity to discuss
24 with your client the letter that Mr. Kornegay wrote to the
25 Court?

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1 MS. KUNSTLER: Yes, your Honor.

2 THE COURT: What is the status of your discussions
3 with him about that?

4 MS. KUNSTLER: Your Honor, Mr. Kornegay's position
5 remains the same. It is a little bit -- I'm a little bit
6 uncomfortable -- it's hard for me to -- I'd prefer for
7 Mr. Kornegay to respond to it, actually, because it's --

8 THE COURT: Let me try it this way.

9 MS. KUNSTLER: OK.

10 THE COURT: I need to know whether it is appropriate
11 or not to go ahead with sentencing today, and I need to
12 understand the biggest picture of whether or not Mr. Kornegay
13 is comfortable with your representing him in connection with
14 sentencing. Without disclosing any attorney/client
15 communications, can you give me an insight as to the state of
16 the attorney/client relationship?

17 MS. KUNSTLER: Could you give me one moment, your
18 Honor?

19 THE COURT: Of course.

20 (Pause).

21 MS. KUNSTLER: Mr. Kornegay would prefer not to go
22 ahead with sentence.

23 THE COURT: Is there anything you can tell me as to
24 why?

25 MS. KUNSTLER: The issue remains the same. There

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1 is -- on June 7, 2013 there was a court appearance for which we
2 obtained an audio recording and a written transcript.

3 Mr. Kornegay believes this record is incomplete and that the
4 audio and the transcript don't reflect what the full nature of
5 what happened at that appearance.

6 THE COURT: OK.

7 Mr. Kornegay, I am prepared to go forward with
8 sentencing today. I have received quite effective sentencing
9 submissions from both sides, including from your lawyer.

10 In fact, it's a very impressive sentencing submission.
11 I understand that there remains this issue that has been a
12 source of concern for you for some time about some form of
13 waiver that you believe you were forced to or did make in June
14 of 2013, which apparently is not reflected in any written or
15 audio material you've gotten.

16 I will tell you that based on my review of all the
17 material, even assuming something of that nature happened
18 there, it's entirely irrelevant to sentencing. There is no
19 right that I'm aware of that you gave up. It has not in any
20 way affected your rights in the trial or the sentencing
21 proceeding. So I am a little bit lost as to what relevance it
22 has.

23 If you're saying something different, which is that
24 you have some discomforts with Ms. Kunstler as your counsel, I
25 would welcome knowing that because it may or may not require me

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1 to consider that representation. I will tell you though that
2 the quality of the submission Ms. Kunstler made was quite fine.

3 Mr. Kornegay, what is your view? Do you want to go
4 forward today? If not, why not?

5 THE DEFENDANT: Well, I came here with the intentions
6 to move forward, but -- if me relieving Ms. Kunstler as my
7 attorney is going to put a hold on my sentencing, I would
8 rather not then. I would just move forward. But if it's
9 possible that I can obtain new counsel after today's date, you
10 know, further on for my appeal, if it's possible because, you
11 know, my requests are pretty hard to get accomplished for me.
12 It's been like that throughout my whole process, so it's like
13 I'm not sure --

14 THE COURT: Mr. Kornegay, I'm trying to understand
15 what you are saying. Do you have any hesitation about the work
16 that Ms. Kunstler has done in representing you in connection
17 with sentencing?

18 THE DEFENDANT: Mmm, I can say no, not -- not as much.
19 As far as she puts it all together, I think she did a pretty
20 good job, but just like through the process I felt that we just
21 weren't seeing eye to eye.

22 THE COURT: In other words, is there anything you
23 wanted to have brought to my attention in connection with the
24 sentencing process that has not been brought to my attention?

25 THE DEFENDANT: Nah. No.

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1 THE COURT: For example, I've received quite a number
2 of letters from you that give me some insight, for example,
3 into your life experience independent of the events that gave
4 rise to the indictment in this case.

5 THE DEFENDANT: Mmm-hmm.

6 THE COURT: I found that to be helpful. What I am
7 asking you is: Before we go forward here, I want to make sure
8 there isn't something that you wanted to have before me that
9 wasn't put before me. Did she bring to my attention everything
10 you wanted her to?

11 THE DEFENDANT: No.

12 THE COURT: No, she did not --

13 THE DEFENDANT: No, she did not bring what I wanted
14 her to bring -- for your attention, for you to know.

15 THE COURT: What was it that's missing?

16 THE DEFENDANT: Well, I sent you my request in the
17 reconstruction of the hearing because that -- that had a lot to
18 do with me moving forward with the counsel that I've had.
19 That's why as on record it shows that I've had numerous of
20 counsel because of this situation.

21 THE COURT: Right. I guess what I am trying to
22 understand is, Mr. Kornegay, what happened in your view at that
23 hearing that you think would be relevant to sentencing.

24 THE DEFENDANT: The fact that I was -- that in court,
25 you know, I signed documents that I didn't know what I was

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1 signing and the fact that my lawyer dismissed me having
2 knowledge of this to the magistrate judge at the time because
3 he asked if I understood what was going on, but my lawyer took
4 it upon herself to go yes, and I didn't really know.

5 THE COURT: Look, I appreciate that, and this is
6 consistent with what you have been concerned about at other
7 points in this case.

8 Let me say this if it is any reassurance: Whatever
9 happened that day in magistrate's court is completely
10 irrelevant to me in terms of determining what a just and
11 reasonable sentence is for you. Under the law, in imposing
12 sentence, as you know -- and as I will review when sentencing
13 goes forward -- I am to consider a variety of factors under
14 what is called the Sentencing Statute, Section 3553(a). One of
15 them is the Sentencing Guidelines. Another involves a variety
16 of factors, including your life history and your
17 characteristics, the interests of deterrence, the interest of
18 just punishment, the interest of incapacitation, various
19 factors that I know you're aware of.

20 Whatever happened procedurally back in magistrate's
21 court back in June of 2013 simply doesn't bear on any of those
22 considerations. Whatever happened there would not in any way,
23 shape or form affect the sentence that I impose here.

24 So, I understand that you are distressed that what you
25 recall having happened in magistrate's court is not being

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1 reflected in the materials that your counsel have gotten to
2 you. I can't sort that out, but I can tell you that it has
3 nothing to do with this proceeding. I am not aware as I sit
4 here now of any meaningful right that you gave up. The whole
5 way the case has proceeded has been with your having invoked
6 all of your rights, including, importantly, the right to go to
7 trial and put the government to its proof.

8 So, I hope that is of some help to you in
9 understanding where I'm coming from. If you would like an
10 adjournment of sentencing, I need to understand just a little
11 more about why. Is there some information, putting aside the
12 June 2013 hearing, that you wanted Ms. Kunstler to bring to my
13 attention in connection with sentencing?

14 THE DEFENDANT: In connection with the sentencing, no;
15 but for my appeal purpose, yes.

16 THE COURT: In other words, after sentencing --

17 THE DEFENDANT: Yes.

18 THE COURT: -- I will advise you that you have a right
19 to appeal, and that if you want to file a notice of appeal that
20 there is a deadline for doing so. I'm sure Ms. Kunstler will
21 assist you with that.

22 Your point though is that you would like a different
23 lawyer to represent you in connection with your appeal than
24 Ms. Kunstler?

25 THE DEFENDANT: Yes.

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1 THE COURT: Why is that?

2 MS. KUNSTLER: Your Honor, if I may?

3 THE COURT: Yes.

4 MS. KUNSTLER: I think that this is a -- that I would
5 be happy to file a notice of appeal on behalf of Mr. Kornegay,
6 but we do have different opinions on the best way to proceed
7 here that I think are irreconcilable in terms of the best
8 course of action on appeal. I think I would with the support
9 of -- with the support of Mr. Kornegay, I was intending to file
10 such a letter after filing the notice with the appellate court.

11 THE COURT: I take it, Mr. Kornegay, you would be
12 seeking a new court-appointed lawyer to assist you with appeal?

13 THE DEFENDANT: Yes.

14 THE COURT: Ms. Kunstler, look, I will be happy to
15 receive that application assuming as you represent that there
16 is enough of a breakdown in the attorney/client relationship as
17 it relates to what the content of an effective appeals brief
18 would look like.

19 If you get me a prompt letter, I will arrange for the
20 appointment of a new lawyer for Mr. Kornegay. I will ask you
21 to assist him with the filing of a notice of appeal to make
22 sure that his rights are not prejudiced in that way, but please
23 get me an application for such an appointment urgently.

24 MS. KUNSTLER: Yes, your Honor.

25 THE COURT: It may be that I need -- I expect I will

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1 need to have a conference with you and Mr. Kornegay at some
2 point after sentencing on which a new duty attorney is here who
3 can take over for you if I decide to grant that application.

4 MS. KUNSTLER: Your Honor, in situations like this in
5 the past what I've normally done is file the notice and then
6 file a motion to withdraw with the circuit. I don't know that
7 you need to be involved in it, although if the Court wants to
8 entertain that application and do it here, we can do that.

9 THE COURT: That's fine. If the circuit will be
10 amenable to the application, I'm glad for the circuit to do it
11 inasmuch as it is about the appeal. So I will just put on the
12 record this then to the extent it is helpful to Mr. Kornegay in
13 connection with seeking a new lawyer.

14 Mr. Kornegay has indicated that he is fine with the
15 materials that have been submitted in connection with
16 sentencing, but he has indicated that there is some difference
17 of opinion between him and Ms. Kunstler as to how best to
18 represent his interests on appeal. Ms. Kunstler in turn has
19 confirmed that after thoughtful review, there is some
20 difference of opinion between her and Mr. Kornegay.

21 I, therefore, on the basis of what's been represented
22 to me agree, that it would be well worth it for Mr. Kornegay to
23 get new counsel on appeal.

24 Ms. Kunstler, you're at liberty to bring that to the
25 Court of Appeals' attention to the extent you are applying to

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1 be relieved, and to have a new lawyer substituted for you. OK?

2 MS. KUNSTLER: Thank you, your Honor. I may bring it
3 before this Court given this is an unusual case with the number
4 of lawyers that have preceded me, so I may consider which path
5 to take.

6 THE COURT: I leave it to your good judgment. But
7 either way you're responsible for filing a notice of appeal and
8 either way please do that soon.

9 MS. KUNSTLER: Absolutely.

10 THE COURT: With that, Mr. Kornegay, are you
11 comfortable proceeding ahead with sentencing today?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Ms. Kunstler, is there any reason why I
14 shouldn't proceed with sentencing today?

15 MS. KUNSTLER: No, your Honor.

16 THE COURT: Ms. Cucinella?

17 MS. CUCINELLA: No, your Honor.

18 THE COURT: Then I need to go through some of the
19 formalities here before we get to the heart of the matter,
20 which is getting the views of each party as to the appropriate
21 sentence.

22 Ms. Kunstler, have you read the presentence report?

23 MS. KUNSTLER: I have, your Honor.

24 THE COURT: Have you discussed it with your client?

25 MS. KUNSTLER: Yes.

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1 THE COURT: Mr. Kornegay, have you read the
2 presentence report?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Have you discussed it with Ms. Kunstler?

5 THE DEFENDANT: Yes.

6 THE COURT: Have you had opportunity to go over with
7 her any errors in the report or anything else that should be
8 taken up with the Court?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Ms. Cucinella, have you reviewed the
11 presentence report?

12 MS. CUCINELLA: I have.

13 THE COURT: Let's put aside the calculation of the
14 Sentencing Guidelines for now and just look at factual
15 accuracy. Are there any objections to the presentence report
16 regarding its factual accuracy? I do note that there are a
17 couple of factual errors that the defense has drawn to my
18 attention in paragraph 85. Putting those aside, is there
19 anything else?

20 MS. CUCINELLA: Not from the government.

21 MS. KUNSTLER: No other objection to factual accuracy,
22 your Honor.

23 THE COURT: Turning to paragraph 85, which is entitled
24 educational, vocational or special skills, the defense has
25 requested that I attach as an exhibit Mr. Kornegay's high

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1 school equivalency diploma. I'm glad to do that.

2 Second of all, the defense has asked that in paragraph
3 85 it be added that the defendant had vocational training in
4 business skills and building maintenance during a prior period
5 of incarceration. I'm glad to add that as well.

6 Ms. Kunstler, does that respond to the factual
7 objections the defense raised?

8 MS. KUNSTLER: Yes.

9 THE COURT: Is there anything further?

10 MS. KUNSTLER: No.

11 THE COURT: Hearing no other objections then, I will
12 adopt the factual recitations set forth in the presentence
13 report with the modifications I've made today in paragraph 85
14 of the attachment. The presentence report will be made part of
15 the record in this matter. It will be placed under seal. In
16 the event appeal is taken, counsel on appeal may have access to
17 the sealed report without further application to this Court.

18 Is there any reason why the parties' sentencing
19 submissions should not be publicly filed?

20 MS. CUCINELLA: The government doesn't see any.

21 MS. KUNSTLER: Your Honor, we submitted redacted
22 filings with respect to Dr. Drob's report.

23 THE COURT: That's fine. My concern is always that
24 the sentencing submission, at least as redacted, be publicly
25 filed as opposed to being left out of the public record

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1 entirely; but if you have made appropriate redactions, those
2 are fine. But do make sure the balance is publicly filed. It
3 sounds like it has been.

4 MS. KUNSTLER: Yes.

5 THE COURT: Very good.

6 The first step then in the sentencing process is for
7 me to calculate how the Sentencing Guidelines apply here.
8 Although the Court is not required to follow the Sentencing
9 Guidelines, I am required to consider the applicable guideline
10 in determining what a reasonable sentence is. Therefore, to do
11 so, it is necessary that I accurately calculate the guideline
12 range.

13 Here, the parties dispute several aspects of how the
14 guidelines apply, and I am going to resolve those disputes.
15 Please advised though -- and I am going to say this again with
16 equal clarity later in the proceedings -- that in this case, it
17 is the underlying facts more than the guidelines' application
18 to them that is what matters to me. So, it is those facts, not
19 the guidelines, that influence me in determining what the just
20 and reasonable sentence is. But I nevertheless have to go
21 through the exercise of determining how the guidelines apply,
22 so here it goes:

23 The first issue involves calculating the offense
24 level. I am going to do that first on the assumption that the
25 career offender guideline did not apply and then on the

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1 opposite assumption.

2 On the assumption that it does not apply, I find the
3 offense level to be 26. I share the conclusions in the
4 presentence report that Section 2B1.3 applies; that there are
5 three groups, one for each of the robberies underlying
6 substantive Counts 2 through 4; that the base offense level for
7 each is 20; and that a three-level enhancement applies for the
8 Eighth Avenue and Park Avenue robberies for the brandishing or
9 possession of a dangerous weapon pursuant to Section
10 2B3.1(b)(2)(E). Now, I understand that, the defense disputes
11 this adjustment, but I find it to be applicable both as to the
12 wire cutters and separately as to the knife. It seems to me
13 obvious that both a knife and sharp wire cutters are dangerous
14 weapons within the meaning of the guidelines. The evidence at
15 trial was clear that these were brandished and indeed, in some
16 instances, the threats of physical harm were made by one of the
17 robbers, which at least implicitly was a threat referencing
18 that the object carried by the robbers could be used on a store
19 employee were there resistance.

20 I also find that the brandishing of the knife, even to
21 the extent it was made by a confederate of Mr. Kornegay's, was
22 foreseeable to him. Mr. Kornegay was present in the T-Mobile
23 store on Sixth Avenue when the knife was brandished to a
24 security guard. There was also testimony that during the
25 March 2, 2010 robbery of the AT&T store, one of the workers,

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1 Stephen Rosario, explained that one of the robbers was
2 displaying a knife. Mr. Kornegay was present for that robbery
3 too. The broader context supports that he was aware of the
4 weapons brought and brandished. Mr. Kornegay was a participant
5 in each of the nine robberies. There was a common modus
6 operandi to them. The robbers were in close proximity to one
7 another during the robberies and the brandishing of the knife
8 was of a piece with the brandishing of the wire cutters. Both
9 were used to get store employees to back off from blocking the
10 robbers, from interfering with the robbery or the robbers'
11 getaway.

12 In addition, the adjustment applies if the dangerous
13 weapon was possessed. Under the circumstances, it was totally
14 foreseeable to Mr. Kornegay that a knife would be possessed by
15 one of his fellow robbers. There is no basis on which I can
16 find that bringing the knife to a robbery by a co-conspirator
17 was an ultravires or unexpected act by the individual robber
18 acting alone and outside the common plan of the group.

19 I realize the government in an earlier offered plea
20 agreement that was rejected by the defense was not going to
21 pursue this adjustment. That, however is legally irrelevant.
22 The determination would have been made even under those
23 circumstances by the Court, not by the government; and the
24 government's forbearance in order to secure a plea does not
25 bind its position at sentencing, particularly with the defense

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1 having rejected the plea offer. That is particularly so since
2 it is likely that during trial preparation and trial, the
3 government developed a sharper view of the facts of each
4 robbery and made a focus more on this particular adjustment.

5 The trial record makes clear that the adjustment fits.
6 As the overall offense level formed by these groups these,
7 three counts are not grouped together. They must be combined
8 instead under the multiple count rules, and that's what leads
9 me to an offense level of 26.

10 The next issue involves the defendant's criminal
11 history. The parties appear to agree that even if the career
12 offender guideline did not apply, the defendant's Criminal
13 History Category would be level VI. I agree with that based on
14 the facts in the presentence report. I accept the calculations
15 to that effect set out in the presentence report.

16 Putting all of this together, my determination is that
17 if the career offender guideline did not apply, the defendant's
18 guideline range would be between 120 and 150 months
19 imprisonment.

20 The next issue then is whether the career offender
21 guideline does apply. The parties dispute that issue, and I
22 found everyone's sentencing submission to be helpful. I
23 understand, Ms. Kunstler, that the career offender guideline
24 has a dramatic effect on the defendant's sentencing range. It
25 yields a guideline range that you regard as unreasonably high,

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1 and that is a substantial argument, but the first order of
2 business is to consider whether in fact as a literal matter of
3 guideline application the career guideline applies.

4 Here I find that it does apply. Defense's main
5 challenge is to the inclusion as one of the underlying crimes
6 of violence of Mr. Kornegay's youthful offender conviction for
7 second degree robbery. The facts adduced are that a jewelry
8 store was robbed by a group of youths, including Mr. Kornegay,
9 then age 16, and that one of the robbers pushed a store
10 employee to the ground. Mr. Kornegay was ultimately sentenced
11 to one and a third to four years imprisonment for this offense.
12 Under the guidelines, second degree robbery is unquestionably a
13 crime of violence under the guidelines. Factually, some degree
14 of violence was used by a confederate of Mr. Kornegay's. On
15 both of those grounds independently, I find, therefore, that
16 this conviction qualifies and is properly tabulated in
17 determining career offender status.

18 Therefore, I find, like the presentence report, that
19 the career offender guideline applies here. The result of that
20 is to increase Mr. Kornegay's offense level from level 26 to
21 level 32. His Criminal History Category would remain the same
22 at level VI. The resulting guideline range though would
23 become, and does become, 210 to 262 months imprisonment, which
24 I recognize is a substantial increase over the guideline range
25 that would otherwise apply. Ms. Kunstler, in making this

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1 finding I am not in any way stating that I believe that the
2 guideline range is necessarily the proper range in which
3 sentencing should apply. You are at full liberty to make, as
4 you have effectively in your sentencing submission, the
5 argument that sentencing range is unreasonably high. But as
6 strict matter of guidelines math, I find that to be the correct
7 and applicable guideline range.

8 The next subject I need to cover is departures, which
9 is to say, within the framework of the Sentencing Guidelines.
10 The defense argues that a downward departure below the career
11 offender guideline is merited. Under Section 4A1.3(b) of the
12 guidelines, a downward departure of one criminal history
13 category is merited if the defendant's criminal history
14 category substantially overrepresents the seriousness of the
15 defendant's criminal history category or the likelihood that
16 the defendant would commit further crimes. With respect, I do
17 not find that to be the case. Mr. Kornegay has a long criminal
18 history which was calculated at level VI based on his having 15
19 criminal history category points even before consideration was
20 had of the career offender guideline.

21 In addition, I'm mindful that the evidence here
22 convincingly established fully nine separate cell phone store
23 robberies that he participated in; not just the three as to
24 which there were substantive counts charged and found.
25 Criminal History Category VI thus aptly captures the length and

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1 depth of Mr. Kornegay's criminal record. There is no evidence
2 on which I can find less than a likelihood of recidivism.
3 Mr. Kornegay's track record is to the contrary. Therefore, I
4 decline to downwardly depart within the guidelines framework.

5 That said, the defense has substantial arguments
6 within the broader framework of the Section 3553(a) factors
7 that a sentence within the guideline range of 210 to 262 months
8 imprisonment overstates what is necessary here to take account
9 of 3553(a) factors. It is my expectation coming into the
10 sentencing that on the basis of those arguments and based on my
11 consideration of the relevant factors, I will impose a sentence
12 below the range set by the career offender statute.

13 So, I am denying the motion for a downward departure
14 made as it is within the rather confining strictures of the
15 Sentencing Guidelines. I don't find that a downward departure
16 here is available as a matter of law. Even if I did, I would
17 decline to exercise my discretion to depart. I would, and
18 will, instead achieve the same objective of imposing a below
19 Guidelines Sentence by means of making a downward variance
20 under Section 3553(a).

21 So, that I think exhausts all the technical
22 preliminaries. With that, does the government wish to be heard
23 with respect to sentencing?

24 MS. CUCINELLA: Your Honor, for the most part, we are
25 going to rest on the submission. We just reiterate that the

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1 government believes a significant incarceratory sentence is
2 appropriate here. The defendant has proven, as your Honor has
3 just noted, again and again that this is what he goes back to.
4 He has been given a number of chances. His incarceratory
5 sentences thus far have not been significant, and he has almost
6 immediately upon release each time gone back to committing
7 robberies. We have real concerns of recidivism here, real
8 concerns about the safety of the community, and we believe
9 given those, that a significant incarceration is appropriate
10 here.

11 THE COURT: Thank you. Let me ask you whether you
12 agree with the restitution amounts and addressees in the
13 presentence report?

14 MS. CUCINELLA: I believe that those are correct. I
15 have consulted with Ms. Griswold, and she has not raised them
16 as being incorrect. So, going forward, I believe they are
17 correct. If there are any errors, we will definitely address
18 the Court and let probation know.

19 THE COURT: It would be my intention, inasmuch as
20 there are specific numbers and addressees here, to include as
21 part of the judgment in the case the order that restitution be
22 made to those people in those amounts. On that assumption, I
23 will ask you by Monday, if possible, to get me a restitution
24 order that memorializes that.

25 MS. CUCINELLA: Absolutely, your Honor.

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1 THE COURT: I take it the government is not seeking
2 forfeiture on top of restitution?

3 MS. CUCINELLA: That's correct.

4 THE COURT: Does defense counsel wish to be heard?

5 MS. KUNSTLER: Yes, your Honor. I just wanted to make
6 one factual correction. I believe your Honor said a jewelry
7 store, when the robbery was a perfume store.

8 THE COURT: I'm sorry. That probably speaks to my
9 broader insensitivity to matters of jewelry and perfume. In
10 any event, I correct what I said.

11 MS. KUNSTLER: Thank you, your Honor.

12 Your Honor, this is an unusual sentencing.
13 Mr. Kornegay is not a defendant and this is not a case that
14 easily fits into a box. He went to trial and lost. He fully
15 intends to appeal his conviction. Acceptance of responsibility
16 and remorse are areas in which I normally focus on in
17 sentencing do not apply here.

18 Despite that fact, as I argued in my papers and as the
19 Court recognizes, it is our position that a sentence of 210 to
20 262 months is excessive. This is a case to me that really
21 speaks to the parsimony clause and speaks to consideration of
22 what's sufficient but not greater than necessary to comply with
23 the sentencing factors.

24 Now, I recognize that this is an incredibly serious
25 crime. I recognize that the Court must impose a sentence that

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1 reflects that and reflects the other factors outlined in
2 3553(a)(2), but I do think that equities in this case support
3 an individualized sentence.

4 I understand the Court knows this already, and a lot
5 of what I prepared to write today, I don't feel the necessity
6 to say given what the Court has already stated today, but I do
7 want to note that in looking at the Exhibit that the government
8 submitted as an attachment to its sentencing letter, the
9 exhibit where it noted that -- the report showed that a little
10 less than 50 percent, that the average sentence for career
11 offenders was 160 months, far lower than the guidelines range
12 in this case. The government also noted that the report showed
13 that defendants who did not receive government-sponsored
14 below-guideline sentences, of those, a little more than
15 50 percent received within guideline sentences, so the other
16 side of that coin is that a little less than 50 percent
17 received below guideline sentences.

18 THE COURT: When you say "guideline sentence," you
19 mean Sentencing Guidelines as generated by the career offender
20 status?

21 MS. KUNSTLER: Yes, that about half of, according to
22 that commission report, received below career offender
23 guideline sentences. When the government highlights that
24 number, I think their intention is to say Mr. Kornegay is a
25 member of this class. These are a number of people who are

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1 similarly situated to Mr. Kornegay, and of that a hundred
2 percent, a little more than 50 are getting guideline sentences,
3 career offender sentences.

4 But I think what our sentencing submission shows is
5 that he is precisely the type of defendant who falls in the
6 slightly less than 50 percent that receives non-guideline
7 sentences. He is of that class of defendants that gives judges
8 pause precisely because one of the offenses that triggers that
9 guideline is an offense that is remote in time and that
10 happened when he was a very young person. This is the group of
11 offenders noted in that '86 Law Review Article I cited which
12 addresses departures. This is also the group of offenders
13 noted by Judge Bennett in *U.S. v. Neuhaus*, the opinion I
14 attached to my papers.

15 The fact is that when Mr. Kornegay was 16-years-old,
16 he was part of a large group of teenagers who robbed a perfume
17 store. If that happened today, the crime might have been
18 treated differently. We certainly look at young people
19 differently today. There's been a large body of science and
20 recent Supreme Court decisions about how the teenage brain
21 works differently. Now we understand that teenagers make
22 reckless decisions.

23 So, given what we know now, I see the sentence as an
24 opportunity not to change the past but to acknowledge it, to
25 acknowledge that we see youth differently today and to evaluate

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1 the career offender guideline through that new lens of how
2 young people make reckless, impulsive decisions that should not
3 define the rest of their lives.

4 I understand this is in the context a person who went
5 on to commit further crimes, but I submit that the longest term
6 of incarceration Mr. Kornegay has received so far is 54 months.
7 He has two substantial sentences: One for a crime committed at
8 16, and one for a crime committed at age 22. They were severe
9 sentences. I understand that the government looks at this
10 criminal history and says Mr. Kornegay is not a person who is
11 getting the message; that he is not a person who has learned
12 from his mistakes. But I think that these sentences were
13 severe for somebody so young. It's also clear that
14 Mr. Kornegay is a person who never got the help he needed and
15 who never got a break from anyone and a person who was routed
16 into the criminal justice system at a very young age.

17 I also want to recognize Mr. Kornegay's family who are
18 here in the courtroom today to support him, who have written
19 letters to this Court that show Mr. Kornegay is more than the
20 sum of his crime; and not just letters from his family, your
21 Honor, but letters from people who he is incarcerated with at
22 the MCC; that Mr. Kornegay is a person with real relationships
23 who form strong ties, who people care about, and who cares
24 about others.

25 That to me also highlights a little bit of what is

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1 unfortunate about where we find ourselves today in this
2 courtroom. On balance, I stand with my papers and for the
3 reasons argued in my papers that a sentence of 92 months, which
4 is a considerable sentence, is a sentence that will reflect the
5 seriousness of the offense, promote respect for law, provide
6 just punishment, afford adequate deterrence and protect the
7 public from future crimes.

8 Thank you, your Honor.

9 THE COURT: Thank you. Mr. Kornegay, do you wish to
10 make a statement?

11 (Audience speaking)

12 THE DEFENDANT: Can I stand?

13 THE COURT: Please by all means.

14 THE DEFENDANT: I just want to say I love y'all here.

15 (Audience speaking)

16 THE DEFENDANT: Your Honor, my family, you know,
17 that's the only thing that I have in this world, so...

18 THE COURT: I would just ask you to speak up. I'm
19 having a little difficulty hearing you.

20 THE DEFENDANT: I said my family is the only thing I
21 have in this world, and it's the only people who has been there
22 for me no matter what I went through. Even times when I was
23 right and some things when I was wrong, you know, so I -- I
24 just give them -- I just want to thank them for always being
25 there for me and accepting the things that I've done and, you

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1 know, just help me molding me to be the person I am today.

2 As far as my case, I -- I pretty much said as much as
3 I could say about it because it's just another fight within a
4 fight, you know. You know, it's a lot of -- it's a lot of
5 points that have been taken away from me for this, and this
6 situation, this process it's like one of the worst things I
7 ever been through in my life, but I'll be all right. That's
8 all.

9 THE COURT: Thank you, Mr. Kornegay.

10 I am going to take a few moments and collect my
11 thoughts.

12 (Pause)

13 (Audience speaking)

14 THE COURT: Is there any reason why sentence should
15 not now be imposed?

16 MS. CUCINELLA: No, your Honor.

17 MS. KUNSTLER: No, your Honor.

18 THE COURT: As I have stated, the guideline range that
19 applies to this case based on application of the career
20 offender guideline is between 210 and 262 months imprisonment.
21 Without that guideline, the guideline range would be 120 to 150
22 months imprisonment.

23 Under the Supreme Court's decision in *Booker* and the
24 cases that have followed it, the guideline range though is only
25 one factor that a court must consider in deciding the

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1 appropriate and reasonable sentence. The court is also
2 required to consider the other factors set forth in Title 18
3 United States Code, Section 3553(a) of the sentencing statute.

4 Those factors include the following: The nature and
5 circumstances of the offense, the history and characteristics
6 of the defendant, the need for the sentence imposed to reflect
7 the seriousness of the offense, to promote respect for the law
8 and to provide just punishment for the offense, the need for
9 the sentence imposed to protect the public from further crimes
10 of the defendant, the need for the sentence imposed to afford
11 adequate deterrence to criminal conduct, and the need for the
12 sentence imposed to provide the defendant with needed
13 educational or vocational training, medical care or other
14 correctional treatment in the most effective manner.

15 The court is required to impose a sentence sufficient
16 but no greater than necessary to comply with the purposes set
17 out above. That is the parsimony clause to which Mr. Kunstler
18 referred to a few moments ago. I find that the sentence I am
19 about to pronounce is sufficient but not greater than necessary
20 to satisfy the purposes of sentencing that I've just mentioned.

21 Mr. Kornegay, I am obviously quite familiar with this
22 case, having presided over the trial and I have read carefully
23 the excellent sentencing submissions that I have received from
24 both sides. I've given a lot of time and thought and attention
25 to the appropriate sentence in your case in light of those

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1 facts and in light of the statutory factors, the ones that I
2 just reviewed, the ones that Section 3553(a) requires me
3 consider.

4 These are my thoughts: The first Section 3553(a)
5 factor that I considered is the seriousness of your offense.
6 Yours was very serious. The evidence at trial showed that you
7 and your co-conspirators robbed nine cell phone stores in New
8 York City. Each time the group used cutting tools to steal
9 display cell phones. On various robberies, those tools or
10 knives were brandished at employees; and employees who
11 attempted to interfere with the robbery or the robbers' escape
12 were threatened or pushed out of the way.

13 The robbery is serious for much more than the
14 merchandise that was taken. You created a serious risk each
15 time that violence, maybe even deadly violence, would occur.
16 It is a credit largely to the restraint of the security guards
17 and other store employees that each time they had the chance to
18 block or fight one of the robbers or prevent them from leaving,
19 they eventually showed the good judgment to stand down. As I
20 recall one of the trial witnesses saying, "It's only a cell
21 phone." Of course, another reason they stood down was because
22 of the wire cutters and knives that the robbers had with them.
23 They were armed; the employees were not. My point is that it
24 is really only a matter of good fortune and good judgment by
25 the victims that none of the robberies led to serious injury or

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1 even death.

2 The robberies were also deeply wrongful in the way
3 they generated fear. I was really struck watching the security
4 videos and listening to the witnesses how terrified some of
5 them were, and who wouldn't be, by having a group of three or
6 four men approximately enter a store, their identities partly
7 concealed under hats and jackets, bearing cutting tools,
8 brandishing wire cutters and/or knives, helping themselves to
9 merchandise and threatening employees who got in their way and
10 muscling others out of the way. Any incident like that would
11 likely scar or scare an employee or, for that matter, a
12 customer for perhaps a long time. You are among those
13 responsible for that. It was inherit in your scheme and,
14 indeed, a critical part of it to instill fear in the people
15 that were robbed to get them to back off from getting in the
16 way.

17 The final aspect of the seriousness of the offense is
18 obvious, but I will say it anyway: It is the sheer number of
19 stores that were hit: Nine stores in total. That is a lot of
20 people who were robbed, scared and threatened.

21 Under Section 3553(a), I need to consider as well the
22 need for what is called just punishment. Like the seriousness
23 of the offense, this factor calls for a very long sentence here
24 and for much the same reasons.

25 I also am to consider the need to promote respect for

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1 the law. Here, too, a long sentence, I'm sorry to say, is
2 needed, less the laws against robberies, including robberies
3 facilitated by cutting tools be treated as less than vitally
4 important.

5 I am also to consider the interest in general
6 deterrence. That means the need to send a message to other
7 people who would consider committing similar crimes; that is to
8 say, store robberies, that is sufficient to deter them from
9 following your lead. There is enough crime in the city that we
10 can be sure there are people who every day consider robbing
11 stores. Your sentence needs to be long enough to ensure that
12 another would-be robber out there knows that if they rob
13 multiple stores using knives or wire cutters no less and get
14 caught, they can count on going to jail for a long time.

15 A very important consideration for me here is what is
16 called specific deterrence. That means the need to send a
17 message to you personally, Mr. Kornegay, that is sufficient to
18 deter you from committing more crimes when you are released
19 from jail. You have a long criminal history, which is aptly
20 reviewed in the presentence report and in the government's
21 sentencing submission. There is nothing in your history that
22 says to me that any punishment previously inflicted has
23 deterred you in any way from committing crimes. Indeed, you
24 committed this spree of nine robberies after having been
25 prosecuted for a very similar prior robbery. I cannot be sure

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1 whether any sentence I impose here will get through to you, but
2 if any sentence does, it needs to be materially longer than
3 your prior ones.

4 Under Section 3553(a) an important factor is also
5 public protection, or what is called incapacitation. In this
6 case, I find that factor to be extremely important. Given your
7 long record of committing serial and similar robberies, there
8 is every reason to believe that if you were at large again, you
9 would rob again. There is nothing in the record before me that
10 suggests any restraint or moral compunctions on your part to
11 hold you back. There is nothing in the record that suggests
12 that concerns of getting caught or getting put in prison hold
13 you back. And you are no longer an adolescent. You can no
14 longer credibly claim to have committed crimes out of the
15 immaturity and recklessness of youth. I see that pattern in a
16 lot of my cases, but it doesn't fit here. You committed these
17 nine robberies from about age 27 through 29, and today you are
18 33. The record before me, instead, committing such crimes
19 appears to be part of a settled pattern. Based on your life so
20 far, a person could reasonably conclude that it is what you do.
21 You have done and said nothing to me that says you have
22 accepted responsibility for your mistakes. I understand you
23 are empathetic to your family, and I respect the sincerity of
24 that, but that is different.

25 From the letter you wrote me, you appear more focused

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1 on what you perceive to be your counsel's shortcomings than on
2 your own accountability. So, on the assumption that you have
3 not been specifically deterred by this prosecution, I need to
4 impose a long sentence simply to protect the public. Keeping
5 you in jail for a long period of years is the one sure way to
6 ensure that future employees at cell phone stores or other
7 stores are not subjected to the terrifying invasions that the
8 employees of these nine stores were. All of these factors, all
9 the ones I've reviewed so far, separately and together, point
10 towards a long prison sentence.

11 That said, there are some factors here that point in
12 the other direction, and I want to review them now. To begin
13 with, the robberies themselves did not have violence as their
14 objective. As the videos show, the goal of the robbers was to
15 take the display cell phones and to get in and get out as fast
16 as humanly possible. To the extent threats or brandishing or
17 pushing occurred, it was to achieve that goal. It does not
18 appear that you had any desire to physically hurt someone for
19 its own sake. That is important perspective, it is important
20 context, and I have it firmly in mind as I reflect on your
21 crimes.

22 Second, on the basis your counsel's extremely
23 thoughtful sentencing submission, it appears to me that you
24 have real difficulty making smart, rational assessments. That
25 is reflected, frankly, in your dogged focus on the issue of

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1 whether your first lawyer asked you to sign some form of
2 waiver, which all of the lawyers and I assured have you is of
3 no moment. It may be reflected in your difficulty finding
4 common ground with your series of lawyers, very capable lawyers
5 who I appointed sequentially to help you. It may be reflected
6 in your persistent committing of crimes, including similar
7 crimes directed at cell phone stores in the same few
8 neighborhoods when your experience and common sense had to tell
9 you, you would eventually get caught, and that this day would
10 come. It may reflect itself in your decision to forego the
11 government's earlier plea offer.

12 To be quite sure, I can't give you any credit for
13 acceptance of responsibility. There isn't a shred of
14 acceptance of responsibility reflected on this record. But to
15 the extent there is a persistent rigidity in your thinking and
16 a distrust of advice given to you, and to the extent that may
17 reflect on some kind of organic inhibition within you, I
18 consider it relevant to the just sentence.

19 Third, under Section 3553(a), I am to consider a
20 defendant's history and his characteristics. I have already
21 reviewed your history as it relates to this crime and to prior
22 crimes, but from your counsel's sentencing submission, I saw a
23 different side of you. I saw a well-loved family man, a fun
24 uncle, a supportive fellow inmate; in short, a person who, with
25 his family and in his private life, projects totally

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1 differently than the hooded robber of the cell phone stores
2 whom I saw on the videos.

3 I have received a number of letters on your behalf and
4 I want to quote a few of them which gave me some insight which
5 show the source of why I just said what I said. One of them is
6 from your niece Quinazia Pauling, and she says of you that you
7 are very nice; that you take her to school sometimes. "He is
8 very important to me."

9 Your niece, Navia Anel Benton, also describes you as
10 very fun. She says you tell her jokes and brings her snacks.
11 "He tells me he loves me every day."

12 Your goddaughter, Ania Martin, describes you as a very
13 nice person who takes her and her sister and their cousin to
14 school every day. "He is very important to me," she writes.
15 "I love him very much."

16 The handwriting is a little hard to read. The next
17 letter is from what appears to be Dijon Pauling. Forgive me if
18 I got the pronunciation wrong, but you are that letter-writer's
19 uncle, and the letter reads: "He's always there if I need him
20 or even if I didn't. I look forward to every moment I got to
21 see him and talk about everything. He was the type of man to
22 encourage the ones he loves to do what was right."

23 Garisha Pauling -- again, forgive the
24 mispronunciation -- writes: "I wish my uncle was there to
25 celebrate my recent birthday with me. He is a wonderful man

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1 who deserves a better chance in life. My uncle is talented,
2 funny, loving, kind-hearted, and a very intelligent man who has
3 a unique personality, and he's always there for us when we need
4 him the most."

5 Again, I'm giving excerpts, but they're revealing
6 excerpts.

7 Daquan Fagan is the next letter writer, Mr. Kornegay's
8 brother-in-law. He writes: "Over the past 12 years of knowing
9 Raymond, I've learned he's very dependable, strong, willing and
10 a kind-hearted person. He has been a backbone to me through
11 many hard times in life. He is someone you can talk to and
12 express yourself without him judging you. His words of
13 encouragement was always powerful. They would help you get
14 through the toughest days."

15 Tanisha Pauling, your sister writes: "Among other
16 things, my brother Raymond loves music. He can sing very well.
17 He also likes to write music. My brother also loves
18 basketball. He struggles in his life, but if you have family,
19 you can get through a lot. Raymond has a host of friends that
20 love him and miss him dearly in our neighborhood."

21 There are a number of other letters. I am not reading
22 them all, but finally your mother writes: He is a good child.
23 She describes how you help her. He is not a bad person, and
24 she asks me to take into account all of those good qualities.

25 Mr. Kornegay, on the day a person is sentenced, it is

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1 appropriate that they be considered in the totality of their
2 life experiences and not merely the crimes they committed.
3 Your sentence today will reflect that, and I am taking into
4 account your many positive qualities as reflected in those
5 letters. One of the things I see time and time again in this
6 job is that people are complex, and that the same person who
7 can commit a crime that society justly abhors also can be a
8 good and gentle person in their private life, and I see that in
9 you.

10 I've given a lot of thought today to how the
11 guidelines fit here. Without the career offender guideline,
12 your sentencing range would be between 120 and 150 months
13 imprisonment. I don't find persuasive the defense's arguments
14 for a sentence below that range. The conduct here is much too
15 serious and much too pervasive in the interest in general and
16 specific deterrence, and especially incapacitation, way too
17 strong to justify any such sentence.

18 I've also given a lot of thought to the career
19 offender guideline and the policy considerations underlying it
20 as they apply in this case. My view here is that that
21 guideline does capture something very real. The policy goals
22 under that guideline are to incapacitate the career offender
23 and to put others on notice that chronic violence will be
24 punished by very high prison sentences.

25 For the reasons I've covered those goals with track

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1 factors identified in 3553(a) are highly relevant here. The
2 fact, Mr. Kornegay, that you participated in nine cell phone
3 store robberies, whereas the guideline range here is calculated
4 based on just three reinforces the characterization of you as a
5 career offender.

6 It is my intention to impose a sentence somewhat above
7 the guideline range that would otherwise apply to reflect the
8 fact that policies underlying the career offender guideline do
9 resonate and apply here. At the same time, I think that the
10 career offender guideline here pushes the sentence way too high
11 in this case. You are a recidivist many times over, and there
12 is a grave risk that if at liberty, you would commit yet more
13 crimes. But offset against that are the factors I reviewed a
14 few moments ago, primarily the fact that your crimes here are
15 not motivated by violence, it did not involve actual infliction
16 of injury, and I've also taken into account your history and
17 characteristics as I reviewed it a few moments ago.

18 In my view, to reflexively apply the career offender
19 guideline here would elevate the form of that guideline over
20 the substance of the 3553(a) factors. My judgment, therefore,
21 is that a sentence below the career offender guideline but
22 above the guideline that would apply without that guideline is
23 in order here.

24 I am now going to state the sentence I intend to
25 impose. Counsel will have a final opportunity to make legal

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1 objections before the sentenced is finally imposed.

2 Mr. Kornegay, would you please rise.

3 After assessing the particular facts of this case and
4 the factors under Section 3553(a), including the Sentencing
5 Guidelines, it is the judgment of the Court that you are to
6 serve a sentence of 180 months imprisonment in the custody of
7 the Bureau of Prisons to be followed by a period of three years
8 supervised release. I impose the same sentence on each of the
9 four counts. The sentence is to run concurrently.

10 As to supervised release, the standard conditions of
11 supervised release shall apply. In addition, you will be
12 subject to the following mandatory conditions which are set out
13 in paragraph page 24 of the presentence report:

14 You shall not commit another federal, state or local
15 crime.

16 You shall not illegally possess a controlled
17 substance.

18 You shall not possess a firearm or destructive device.

19 You shall refrain from any unlawful use of a
20 controlled substance, and you shall cooperate in the collection
21 of DNA as directed by the probation officer.

22 In addition, you must meet the following special
23 conditions, each of which I have determined are appropriate on
24 the facts of this case: You shall submit your person,
25 residence, place of business, vehicle or other premises under

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1 your control to a search on the basis that the probation
2 officer has a reasonable belief that contraband or evidence of
3 a violation of the conditions of release may be found. You
4 shall provide the probation officer with access to any
5 requested financial information. You shall not incur any
6 credit charges or open additional lines of credit without the
7 approval of the probation officer unless you are in compliance
8 with the payment schedule set with respect to the payment of
9 restitution. You are to report to the nearest probation office
10 within 72 hours of release from custody.

11 Separately, I have the legal authority to impose a
12 fine here. I am not going to do so. I am persuaded that you
13 don't have the ability to pay it, and to the extent you do have
14 some money, it ought to be used to pay restitution to the
15 victims here.

16 I am required to impose, and do impose, a mandatory
17 special assessment of \$400; \$100 for each much your four crimes
18 of conviction; that amount to be paid immediately

19 With respect to restitution, I am going to order the
20 restitution be paid as set out on page 25 of the presentence
21 report, and, again, I'm directing the government to get me a
22 restitution order by the end of Monday that memorializes the
23 terms, payees and addressees, but briefly, you are to pay
24 \$3,499.90 to T-Mobile U.S.A. at the name and address reflected
25 on page 25 of the presentence report, and \$3,398 to AT&T, also

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1 at the name and address reflected in the presentence report.

2 The government is not pursuing forfeiture, and, therefore, I do
3 not order it here.

4 Does either counsel know of any legal reason why this
5 sentence should not be imposed as stated?

6 MS. CUCINELLA: No, your Honor.

7 MS. KUNSTLER: No, your Honor.

8 THE COURT: The sentence as stated is imposed.

9 Are there any open counts, Ms. Cucinella?

10 MS. CUCINELLA: I don't believe so.

11 THE COURT: Mr. Kornegay, I've mentioned this before,
12 but I will now mention it officially. You have a right to
13 appeal your conviction and your sentence. If you are unable to
14 pay for the cost of an appeal, you may apply for leave to
15 appeal in forma pauperis. The notice of appeal must be filed
16 within 14 days of the judgment convict of conviction.

17 Ms. Kunstler has assured me she will file that timely.

18 Is there anything further from the government?

19 MS. CUCINELLA: No, your Honor.

20 THE COURT: Is there anything further from the
21 defense?

22 MS. KUNSTLER: No, your Honor.

23 THE COURT: Please be seated. I want to say a word to
24 Mr. Kornegay's friends and family.

25 Ladies and gentlemen, I want to acknowledge the fact

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1 that you are here, and I want to thank those of you who wrote
2 letters to me. Sentencing is the hardest thing I do, and the
3 hardest part about it is to take the measure of the defendant
4 on sentencing and to consider them as more than just a person
5 who committed a particular crime. That is not easy, and it is
6 often very hard to get a sense of who the person is based on
7 the limited materials that are provided to me.

8 So, in a case like this when I get letters like the
9 beautiful letters I've received from many of you about
10 Mr. Kornegay, I'm appreciative because I get a better sense of
11 who that person is. The letters you wrote here today gave me a
12 sense of a different side of him, and I can assure you that
13 they made a difference in my determination of what the
14 appropriate sentence was here. So, I thank you for writing,
15 and please know that as hard as I'm sure it is to hear this
16 proceeding and the sentence pronounced, you made a real
17 contribution to him and affected to his favor the sentence that
18 I did pronounce.

19 Second of all, the very fact that you are all here for
20 him on what has to be one of the hardest days in his life gives
21 me confidence that you will be with him the rest of the way:
22 When he is in prison and, most importantly, when he is
23 released, when I think he really will need the guidance of
24 loving family members and friend network to make sure, frankly,
25 that this doesn't happen again. It is troubling to me that

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1 there have been as many crimes reflected as there are in his
2 presentence report and as I heard about at trial.

3 You have here a good man. It is my hope that the
4 guidance of his family will help lead him in the next chapter
5 of his life to lead a law-abiding life. In any event, I thank
6 you for being here and for participating in the ways you have.

7 We stand adjourned.

8 Let me ask, Ms. Kunstler, do you want me to recommend
9 to the Bureau of Prisons where Mr. Kornegay is to be assigned?

10 MS. KUNSTLER: May I have a moment?

11 THE COURT: Of course.

12 MS. KUNSTLER: We have no specific recommendation
13 other than it be close to New York City to allow family
14 visitation.

15 THE COURT: You'd like me to designate that he be
16 located at a facility as close to New York as possible?

17 MS. KUNSTLER: Yes.

18 THE COURT: I'd be glad to do that and I will do that.
19 Thank you. We stand adjourned.

20 (Adjourned)
21
22
23
24
25